IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.4057 OF 2004

Kalyan Dombivali Municipal Corporation and another.).. Petitioners

Versus

Remeo Luther Martin).. Respondent

Mr.I.R.Kulkarni for the Petitioners.

Ms.Seema Sarnaik for the Respondent.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 13TH AUGUST 2004

P.C.:

. This Petition challenges the order dated 20th December 2003 passed by the Industrial Court, Thane in Complaint (ULP) No.798 of 1999. According to the Petitioners, this order is erroneous because the Industrial Court has granted permanency to the Respondent workman, as a Driver, with effect from 31st December 1995 and has further directed that all monetary benefits should be extended to him from 31st December 1995. A further direction regarding the insertion of the Respondent's name as a Driver in the seniority list of Drivers has also been given.

2. The case of the Petitioners is that the

Respondent was made permanent as a ‘Kamgar’ pursuant to the settlement arrived at between the Petitioners and the Union. Accordingly, the Petitioners had been paying the Respondent’s wages as a ‘Kamgar’ and have made him a permanent workman as a ‘Kamgar’. It is submitted that the Petitioners cannot regularise him in any post unless there is a vacancy and the appointment is made in accordance with the rules and regulations framed under the B.P.M.C. Act. A further submission is made that all appointments which were in accordance with the provisions of the B.P.M.C. Act have been terminated pursuant to the Circular of 1998 which the Industrial Court has not considered, although it was produced on record.

3. The Industrial Court has granted permanency because the workman had completed 240 days in service in accordance with Section 4C of the Model Standing orders framed under the Industrial Employment Standing Orders Act which was applicable to the workman. The Gawande Award also has provided for granting relief to workmen completing three years in service by paying them wages and other benefits of permanent workmen, although they may not have been made permanent because of there being no vacancies. The Industrial Court has found that the witness for the Petitioner Corporation has stated that out of 179 sanctioned post of the Drivers, 140 posts were filled and 34 posts, although sanctioned were kept vacant

by the Petitioners. In these circumstances, the Industrial Court has granted the relief as claimed in the Complaint. I see no reason to interfere with this order of the Industrial Court.

4. Mr.Kulkarni for the Petitioners submits that since another Petition relating to ad-hoc employees has been admitted, the present Petition may also be admitted. This submission cannot be accepted as that Petition relates to the post of Junior Engineers. The learned Advocate for the Petitioners relies on the judgment in the case of *State of M.P. and another* vs. *Dharam Bir*, **(1998) 6 SCC 165** and submits that there can be no automatic regularisation in post unless the requisite qualifications are fulfilled by that candidate. This judgment is not at all applicable to the facts of the present case. The case before the Apex Court was in respect of a person who was appointed to the Principal Class II post for six months and it was found that although he had worked in that post, he did not hold the requisite qualifications. It was in those circumstances that the Supreme Court held that the experience gained on account of working in a post for over a decade cannot be equated with educational qualifications required to be possessed by a candidate as a condition of eligibility for promotion to a higher post.

5. In the present case, the Respondent workman has been working continuously from 1993 as a Driver. The Rules which are applicable are the Model Standing Orders and the Gawande Award. The Supreme Court has also in the judgment cited above observed that regularisation in a post must be made in accordance with the Rules applicable. The Industrial Court has granted permanency taking into consideration all the relevant factors. In these circumstances, the judgment in the case of *Dharam Bir* (supra) has no application to the facts in the present case.

6. I see no reason to interfere with the order of the Industrial Court. Petition rejected.

7. Parties to act on authenticated copy of this order.